REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA No. 257 OF 2007**

% **Date of Decision** : 7th September, 2007.

UNION OF INDIA & ORS. .... Appellants.
Through Mr. Rakesh Tikku with
Mr. P. Gautam, Advocates

VERSUS

SMT.SHYAMA MALHOTRA & ANR. .... Respondents.
Through Mr. P.V Kapoor, Sr. Advocate with
Mr. S.K. Bhaduri, Advocate

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? YES.

3. Whether the judgment should be reported in the Digest ? YES.

SANJIV KHANNA, J:

1. Union of India-the appellant has filed the present Appeal against

the judgment dated 20th February, 2007 allowing the writ petition filed by Smt.Shyama Malhotra-the respondent No.1 and her son, Mr. Jaswant Malhotra-the respondent No.2. By the impugned judgment, learned Single Judge has directed the appellant to reimburse medical expenditure incurred on treatment of respondent No.1 .

2. It is an admitted case of the parties that the respondent No.1 who is about 80 years old, was admitted for treatment in Batra Hospital (Nephrology Department), an Institute approved under the Central Government Health Scheme (hereinafter referred to as CGHS, for short), in a critical condition and emergent circumstances in May, 2005. A large portion of her intestine had turned gangreous and was operated upon. She remained in hospital for nearly three months and expenditure of more than Rs.14 lakhs was incurred. Out of the above amount, Rs.10,06,666/- was refunded by CGHS to the respondent No.2 as the name of the respondent No.1 was shown as a dependent of the respondent No.2 in the CGHS card. It may be stated here that a Writ Petition (Civil) No. 2113/2006 was filed as a

Public Interest Litigation alleging, inter alia, that the respondent No.2 was not entitled to reimbursement of the medical expenditure as total monthly income of respondent No.1 was more than Rs.1500/-. The respondent No.2 in these circumstances refunded the amount of Rs.10,06,666/- to the appellant in March, 2006.

3. On 20th March, 2006, the respondent No.1 being a retired Central Government employee was issued a CGHS card in her own name. Thereafter, she applied for reimbursement of medical expenses incurred. The said request was rejected on the ground that the medical expenditure was incurred when she was incorrectly shown as a dependent family member of the respondent No.2 and CGHS card was issued in her favour only on 20th March, 2006.

4. Both the respondents filed a Writ Petition (Civil) No. 11843/2006, which stands allowed by the impugned judgment dated 20th February, 2007. Learned Single Judge has held that CGHS card once issued will also cover the expenditure incurred on treatment before the acquisition of the card. While giving the aforesaid finding

the learned Single Judge has referred to the three earlier decisions of this Court in the case of ***S.K. Sharma versus Union of India*** *reported in 2002 (64) DRJ 620*, ***V.K. Jagdhari versus Union of India and others*** *reported in 2005 (85) DRJ 160* and ***B.R. Mehta versus Union of India*** *reported in 1999 (50) DRJ 270 : 1999 (79) DLT 388* . In these decisions it has been held that benefits under the CGHS Scheme cannot be restricted from the date on which the card is issued and once membership is accepted it relates back to the point of time when the beneficiary was hospitalised.

5. Learned counsel for the appellant-Union of India sought to distinguish the said decisions on the ground that the parties in the said cases were residing in non-CGHS areas and therefore after undergoing medical treatment had applied for the CGHS cards. It was also pointed out that against the decision in ***B.R. Mehta's*** **(**supra) case, an appeal was filed but was dismissed but with the observation that the said decision would not operate as a binding precedent.

6. ***B.R. Mehta*** (supra) was decided in 1999, but thereafter there have been number of decisions of this Court till 2007, wherein it has been repeatedly held that refusal to reimburse medical expenses incurred by a retired Government servant on the ground that he was not a card holder at the relevant time, is not justified. It was noted in ***S.K. Sharma*** (supra) that a card holder under the CGHS is only required to pay a nominal amount and it is the duty of the Government to provide proper health services and an officer or a pensioner should not suffer. The distinction sought to be drawn by the learned counsel for the appellant in this case and other cases that the pensioners were residing in non-CGHS areas cannot be accepted as this, was not the sole ground on which the writ petitions were allowed. The Scheme itself stipulates that a pensioner residing in a non-CGHS area can also obtain CGHS card from the nearest CGHS covered city. A government servant while in service prior to his retirement pays CGHS subscription. Cases of pensioners is distinct and separate from government servants who do not opt for the

CGHS while in service.

7. We may also refer to another decision of this Court in the case of ***V.K. Jagdhari*** (supra) wherein the entire case law on the subject was examined and the following propositions were summarised:-

> "13. The position emerging from various decisions of this Court may be summarised as follows:
>
> (1) Even if an employee contributes after availing medical facilities, and becomes member of the scheme after treatment, he is entitled to reimbursement — ***Govt. of NCT*** v. ***S.S. Sharma,*** 2005(118) DLT 144 (DB).
>
> (2) Even if membership under scheme not processed the retiree is entitled to benefits of Scheme — ***Mohinder Pal v. UOI,*** 117 (2005) DLT 204.
>
> (3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is the correct amount — ***Milap Singh*** v. ***UOI,*** 113 (2004) DLT 91; ***Ran Deep Kumar Rana*** v. ***UOI,*** 111 (2004) DLT 473 (DB).
>
> (4) The pensioner is entitled to full reimbursement so long the hospital remains

> in approved list ***P.N. Chopra*** **v.** ***UOI,*** 111 (2004) DLT 190.
>
> (5) The status is of retired employee and this leads to entitlement; the status is not as card holder — ***S.K. Sharma*** **v.** ***UOI,*** 2002(64) DRJ 620.
>
> (6) If medical treatment is availed, whether the employee is a card holder or not is irrelevant and full reimbursement has to be given, ***B.R. Mehta*** v. ***UOI,*** 79 (1999) DLT 388."

8. A Division Bench of this Court in the case of ***Union of India versus T.S. Oberoi and Raj Chawla*** (LPA No. 898/2002) dealt with the matter where after hospitalisation, retired Judges had been enrolled as members of CGHS. It was held that once membership fee was accepted it would relate back to the date of hospitalisation. Though in the case of ***T.S. Oberoi*** (supra), claimants were Judges but it was held that once membership is granted, past medical expenses can be reimbursed.

9. Similarly, in the case of ***Government of NCT of Delhi versus Som Dutt Sharma*** reported in 118 (2005) DLT 144 (DB) the

retired Government servant had become member of the CGHS after having undergone a heart surgery prior to his enrollment as member. The claim for medical reimbursement was rejected. In this case, it was noticed that the relevant provisions which required employees to opt for the medical Scheme and requirement for payment should have been brought to the notice of the retired Government servant.

10. Whether a retired Army officer is entitled to medical treatment/benefits and whether the same can be regarded as part of Article 21 of the Constitution of India- Right to Life, has been recently considered by the Supreme Court in the case of ***Confederation of Ex-Servicemen Association Versus Union of India*** reported in (2006) 8 SCC 399. In the said case the Supreme Court upheld the contributory scheme requiring one time payment as reasonable. It was opined by the Supreme Court that the said scheme does not violate fundamental rights enshrined in Part III of

the Constitution. The Supreme Court further noticed that the State does not have the unlimited resources and financial constraints are a relevant factor that have to be taken into consideration. However, at the same time it cannot be denied that Right to Life under Article 21 embraces not only physical existence but also quality of life.

11. Smt. Shyama Malhotra-respondent No.1 is a retired Government servant and was earlier working in the Ministry of Information and Broadcasting. She is entitled to medical facilities under CGHS, which is applicable to all Central Government servants as well as pensioners. Mr. Jaswant Malhotra-respondent No.2, son of respondent No.1 is also a Central Government servant and is entitled to medical benefits under the CGHS.

12. Benefits under the CGHS, as per the Scheme placed on record, are available to members and also their spouse and dependent family members. For this purpose, we may refer to Clause 26(1) of the Scheme, which reads as under :-

> "26. **CGHS Cards:**
>
> 1. Definition of Family : In accordance with the initial instructions, the term of "Family" for the purposes of the Scheme shall consist of the Government servant's wife or husband, as the case may be children and stepchildren and parents who are mainly dependent on and residing with the Government servant concerned. Subsequently, in pursuance of the recommendations of the Fourth Central Pay Commission, it has been decided that for availing the medical facilities under the Scheme, parents, sisters, widowed sisters, widowed daughters, minor brothers and children will be deemed dependent on the Government employees if they are residing with him and their income from all sources including pension and pension equivalent of DCRG benefit is less than Rs.1500/- per month."

13. A reading of the above clause shows that parents who are "*mainly dependent"* and residing with the Government servant concerned are treated as 'family' for the purpose of the CGHS. The term *"mainly dependent"* however is not defined and elaborated upon. The second part of Clause 26(1) incorporates a deeming clause and parents, sisters, widowed sisters, widowed daughters, minor brother and children are deemed to be dependent on the Government

servant, if they are residing with the Government servant and their income from all sources including pension is less than Rs.1500/- per month. A deeming provision however will not curtail the scope and ambit of the term *"mainly dependent"* in the first part of Clause 26(1). Scope and object of a deeming provision, is to expand and bring within the ambit of the main provision, that which may not form part of the main provision. "When a statute gives a definition and then adds that certain things shall be 'deemed' to be covered by the definition, it matters not whether without that addition the definition would have covered them or not" (as per Lord President Cooper in ***Ferguson V. McMillan***, 1954 S.L.T.109). It is difficult to hold that the deeming part of clause 26 has the effect of restricting or curtailing the natural and general meaning of the term "mainly dependent" as we commonly understand in a reasonable manner.

14. The word " mainly" has been defined in Shorter Oxford Dictionary as *" for most part, chiefly, principally"* . The said common and general meaning of the word "mainly" has been accepted by the Supreme

Court in **Swarnlata Vs. Union of India,** reported in (1979) 3 SCC 165**.** A Division of this court in ***Govind Dass and others Vs. Kuldip Singh***, reported in AIR 1971 Delhi 151, has held that the word "dependent" is not restricted to mere financially dependency but comprehensive enough to include persons who are dependent on the landlord for residential accommodation for the purpose of section 14(1)(e) of the Delhi Rent Control Act,1958. It was observed as under:-

> " ..... The term must be construed as meaning somebody not wholly independent or self-supporting and in a position to set up separate residence. Dependence may not in all circumstances be entirely a matter of finance and ..... To our mind this interpretation, if accepted, would tend to restrict the meaning of the word "dependant" to a person being financially dependant. In the socio-religious structure of Hindu society it is common for all the members of a family of brothers to live together while some men folk in the family may go out of town to earn a livelihood and even remit their earnings to the family. One cannot shut one's eyes to this structure of our society and so to give a restricted meaning to the word "dependant" would be to provide a definition of this word which the legislature has advisedly chosen not to do so...."

15. Words “wholly dependent” as used in MP Civil Services (Medical Attendance) Rules, 1958 were interpreted by the Supreme Court in ***State of Madhya Pradesh Vs. M.P. Ojha***, reported in (1998) 2 SCC 554. In the said Rules word *'wholly'* had been used, whereas in the present Scheme the word used is *'mainly'*. The word 'wholly' as is normally understood means entirely or completely and therefore M.P. Civil Services (Medical Attendance) Rules, 1958 require stricter compliance. While interpreting the term 'wholly dependent', the Supreme Court has elucidated :

> “13. The expression 'wholly dependent' is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression 'wholly dependent' to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would be likely to lead to results which the relevant rules would not have contemplated. The expression 'wholly dependent' has to be understood in the context in which it is used keeping in view the object of the particular rules where it is contained. We cannot curtail the meaning

of 'wholly dependent' by reading into this the definition as given in SR 8 [*sic* SR 2(8)] which has been reproduced above. Further, the expression 'wholly dependent' as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of a family it would mean other support, maybe physical, as well. To be 'wholly dependent' would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. The son has to look after him in his old age. Even otherwise by getting a pension of Rs 414 per month which by any standard is a paltry amount it could not be said that the father was not 'wholly dependent' on his son. That the father had a separate capacity of being a retired government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due

> permission from the competent authority. It was submitted before us that the father being a retired government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was a member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses."

16. A deeming provision is incorporated for giving artificial construction to a word or a definition than that which would otherwise prevail. Sometimes, it is used to clear any ambiguities and place a particular construction beyond doubt, when there is uncertainty. It is used to include what is obvious, what is uncertain or what is in ordinary sense impossible. (See, ***St. Aubyn (L.M.) Vs. AG (No.2)*** reported in (1951) 2 ALL ER 473 (HL). However, mostly a deeming clause is used to extend denotation of the defined term to things that it would in ordinary parlance denote. It creates an artificial friction which

otherwise would not prevail. Each provision has to be examined keeping in view the object for which the legislation has been made. (See, ***Ali Mk and Ors. Versus State of Kerala*** reported in (2003) 11 SCC 632).

17. CGHS is a beneficial and benevolent scheme, a welfare measure to provide for medical treatment of government servants and family members who are “mainly dependent” on the Government servant. The scheme recognises and accepts that a Government servant must take care of his old and aged parents residing with him. A narrow construction may well be self defeating and contrary to the object behind the provision. Dependency for the purpose of the clause will mean dependency for purpose of medical treatment and aid. It is ironical that when medical treatment (even in government hospitals) can land you with bills in lacs, as in the present case, for the deeming clause monthly income of Rs.1500/- has been prescribed. This apparent contradiction, refutes and negates the primary objective. We need not go into these aspects in great detail

in view of the interpretation given by us.

18. One important and relevant factor is that the respondent No.1 is entitled to benefit under CGHS in her own right being a retired government servant and also in case she is *"mainly dependent"* on her son, the respondent No.2. In fact the name of respondent No.1 was included in the CGHS card issued in favour of the respondent No.2 and therefore, she had not initially applied for an individual card in her personal capacity, as a retired Government servant but consequent to some doubts being raised, she applied for and was issued a CGHS card.

19. In view of the peculiar facts of the present case and since the respondent No.1 is entitled to benefit under the CGHS in her own right and she was "mainly dependent" on the respondent No.2, who is a Government servant, we feel that the appellant should pay and reimburse the medical expenses as per rules. In view of the above, we dismiss the present Appeal but without costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 7, 2007
P/RN